IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 584 OF 2006

Smt. Indira Shantaram Sawant ... Petitioner

V/s

Shri Shyamkant Raghunath Maluste & anr. ... Respondents

ALONGWITH

WRIT PETITION NO. 585 of 2006

Smt. Prabhavati Narayan Surve ... Petitioner

V/s

Shri Shyamkant Raghunath Maluste & anr. ... Respondents

Mr. R.V. Pawaskar i/by M/s. Khandeparkar & Associates for the petitioners in both petitions.

Mr. Amit Borkar for the respondents in both petitions.

CORAM: P.V. KAKADE, J.

DATED: 7TH MARCH, 2006

P.C.:

1. Both these petitions can be conveniently disposed of by a common order since the facts in both petitions are similar.

2. Heard both sides. Perused the record.

3. Rule. Rule is made returnable forthwith in both petitions by consent.

4. The petitioners in both the petitions have challenged the order dated 9.12.2005 rejecting the applications for permission to file the written statements after the statutory period of 90 days was over. The applications were made on the ground that the tenant defendants were aged women and were ill and hence delay occurred.

As per the record, summons of the suit was served on the petitioners on 19.4.2005. Therefore the statutory period was to over by 19.7.2005. Her application for written statement was filed in the Court on 6.9.2005. However, it is to be noted that the roznama of the suit of which copy is brought to my notice shows that the suit was fixed for filing written statement in the month of June, 2005 and thereafter it was fixed on 4.8.2005. In other words, the date for filing of the written statement was not fixed on completion of 90 days which should have been in July, 2005 and, therefore, it must be held that 4.8.2005 was the date fixed by the Court for further steps. However, no steps are seen to be

taken on 4.8.2005 which should have been taken by the lower Court by passing appropriate order to proceed as per law in the suit. On this back ground, an application dated 6.9.2005 came to be filed which came to be rejected by one line order to the effect that the ground was not reasonable to set aside the no written statement order. Hence, the application came to be rejected. It is pertinent to note that no written statement order was passed by the lower Court on 5.9.2005 and not on completion of 90 days i.e. in the month of July, 2005 and, therefore, I am inclined to hold that the lower Court should have considered the applications of the petitioners and allow them to file written statements, sympathetically.

5. The learned counsel for the respondent brought to my notice the ruling of the Supreme Court in the case of **Smt. Rani Kusum v/s Smt. Kanchan Devi & ors., reported in 2006 (1) All.MR (S.C.) 63,** wherein it is observed that the power of Court to extend time is not completely taken away, however, departure therefrom would be by way of exception and justice hurried must not result in justice buried. In the situation revealed from the record, I am of the view that, as observed in the case of **Salem Advocate Bar Association V/s Union of India,**

reported in 2005 (5) All. MR (S.C.) 876, the Apex Court has observed that the provision of Order 8 Rule 1 is only directory and mandatory and discretion of the Court is not taken away for extension of the time.

Under the circumstances, I hold that it is a fit case for granting extension to file written statement beyond the period of 90 days.

6. In the result, the Rule is made absolute. The petitions are allowed in terms of prayer clause (a) and stands disposed of.

The Trial Court is directed to allow the defendant-petitioner to file written statements. Thereafter the suits shall proceed according to law.

7. In view of the facts and circumstances, the Trial Court is directed to expedite the hearing of both suit so as to complete the same within a period of one year from the date of this order.

With these directions, the petitions stand disposed of with no order as to costs.

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